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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,117	12/04/2003	Rainer Dittrich	22733	7654

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EXAMINER

MCNELIS, KATHLEEN A

ART UNIT PAPER NUMBER

1742

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/728,117	<b>Applicant(s)</b> DITTRICH ET AL.	
	<b>Examiner</b> Kathleen A. McNelis	<b>Art Unit</b> 1742	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: none.  
 Claim(s) objected to: none.  
 Claim(s) rejected: 1-3, 6-11.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached.  
 12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). Aug 30, 2005  
 13. ☒ Other: Notice of References Cited.

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Art Unit: 1742

1. Applicants' arguments center around whether one of ordinary skill in the art would consider specific materials disclosed in cited prior art to be porous. Applicants have not defined porosity. The ASM Metals Reference Book, third edition (1993), page 67 defines porosity as " (1) fine holes or pores within a solid; the amount of these pores is expressed as a percentage of the total volume of the solid...". The same reference defines "pores" as "(1) a small opening, void, interstice, or channel within a consolidated solid mass or agglomerate, usually larger than atomic or molecular dimensions..." Since applicants' did not claim or otherwise disclose that a specific percentage of the total volume of the solid was pore space, the porosity could be any value.
2. Correction of informatlities on pages 6, 7, 11, 13 and 18 is acknowledged.
3. Receipt of the IDS is acknowledged, however it has not been corrected as required in the previous (May 31, 2005) office action.
4. The revision is accepted as having been previously disclosed in claim 4, now canceled.
5. Since applicant did not define "porous", the broadest possible interpretation has been placed on the term as having any value of porosity.

It would be obvious to one of ordinary skill in the art that the following materials have a value of porosity, and are therefore porous:

- The manganese ore disclosed in Hunter et al. (US 5,110,351), whether or not it was crushed;
- The calcium oxide projectiles disclosed in Nashiqah et al (US 4,043,798), with or without fireproof paper;
- The lump calcium disclosed in JP 01129925;
- The iron ore disclosed in JP 55107718;
- The lump CaO-CaF<sub>2</sub>-MgO desulfuring agent disclosed in Bogan et al. (US 5,228,902)
- The gas producing compound absorbed in a porous slag forming agent disclosed in Rossorough (US 5,358,550); and
- The degassing additives disclosed by Sherwood (US 4,541,865).

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